

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

MONICA GARCIA, Individually, and  
as heir and representative of the  
ESTATE OF MARIO A. GARCIA,  
Deceased, and as next friend of PAUL  
GARCIA, a Minor,

Plaintiff,

JOSE GARCIA AND BELIA GARCIA  
Intervenors

V.

LCS CORRECTIONS SERVICES,  
INC., MIGUEL NIDERHAUSER, and  
DR. MICHAEL PENDLETON,  
Defendants.

C.A. NO. \_\_\_\_\_

## NOTICE OF REMOVAL

TO THE UNITED STATES DISTRICT JUDGE:

LCS Corrections Services Inc., Miguel Niderhauser, and Dr. Michael Pendleton are the defendants in a civil action brought on November 2, 2009, in the 79<sup>th</sup> District Court of the State of Texas, Brooks County. That action bears the same style as provided above and is assigned Cause No. 09-11-15261-CV.

Expressly reserving all questions other than that of removal, LCS respectfully shows that removal is proper as follows:

I.

The case, as stated by the initial pleading in this action, was at that time not removable. On December 23, 2010, the defendants received an amended pleading from which it may first be ascertained that the case is one which is or has become removable. That pleading is the *Third Amended Original Petition* of Monica Garcia, the plaintiff, and

Monica Garcia filed that pleading and served it on the defendants on that date. The intervenors, Jose and Belia Garcia, filed and served on the defendants a substantially identical *First Amended Plea in Intervention* on December 30, 2010.

Those pleadings made apparent that the District Courts of the United States have original jurisdiction over this action, by operation of 28 U.S.C. §§1331, 1343, or both, because the plaintiff and intervenors have claims that arise under federal law in that the plaintiff and intervenors have asserted civil rights causes of action created by a federal statute, 42 U.S.C. §1983.

Joined in this action with those claims are state-law claims against the defendants. The state-law claims fall under the supplemental jurisdiction of the District Courts of the United States in that those claims are so related to the federal claims that they form part of the same case or controversy under Article III of the United States Constitution. Both claims result from the same incidents and injuries. Because of the relationship of these claims, this entire action falls under the jurisdiction of the District Courts of the United States. Alternatively, should those state-law claims be deemed separate and independent from the joined claim, the entire case nonetheless falls within the removal jurisdiction of the District Courts of the United States granted by 28 U.S.C. §1441(c).

This notice of removal is timely filed under 28 U.S.C. §1446(b) in that it is filed within 30 days of the defendants' receipt of the December 23, 2010, *Third Amended Original Petition* of Monica Garcia.

## II.

Removal of this action is proper under 28 U.S.C. §1441 because this is a civil action brought in a state court, and the federal District Courts have jurisdiction over the

subject matter by operation of 28 U.S.C. §§1331, 1343, or both, because the plaintiff and intervenors assert claims that arise under federal law.

Venue is proper in this district and division under 28 U.S.C. §1441(a) because the state court where this suit has been pending is within this district and division.

LCS and Niderhauser had demanded trial by jury in the state court, and the case was set for jury trial in the state court prior to removal. The defendants maintain their jury demand in this Court.

Copies of all items required by this Court's Local Rule 81 are attached as exhibits to this notice. Because LCS and Pendleton first appeared in this suit voluntarily and before service of process, no executed process as to them is attached to this notice.

### III.

For these reasons, all of the defendants in this action join together and remove this action from the 79<sup>th</sup> District Court, State of Texas, Brooks County, to this Court. The defendants also ask the Court to enter such orders and grant such relief as may be necessary to secure removal and prevent further proceedings in the state court, and the defendants ask for such other relief to which they may be justly entitled.

Respectfully submitted,

/s/ Myra K. Morris

Myra K. Morris, Attorney-in-Charge

Federal I.D. No. 13611

State Bar No. 14495850

Brian C. Miller

Federal I.D. No. 21194

State Bar No. 24002607

802 N. Carancahua

1300 Frost Bank Plaza

Corpus Christi, Texas 78470

(361) 884-8808 Office

(361) 884-7261 Facsimile

**ATTORNEYS FOR DEFENDANT  
LCS CORRECTIONS SERVICES, INC.**

OF COUNSEL:

ROYSTON, RAYZOR, VICKERY & WILLIAMS, L.L.P.

ANDERSON, LEHRMAN,  
BARRE & MARAIST, L.L.P.  
Gaslight Square  
1001 Third Street, Suite1  
Corpus Christi, Texas 78404  
Telephone: (361) 884-4981  
Facsimile: (361) 888-7697

By: /s/ Andrew J. Lehrman  
Andrew J. Lehrman  
State Bar No.: 12178500  
Federal I.D. No.: 329  
E-mail: alehrman@albmlaw.com  
Jordan M. Anderson  
State Bar No.: 24051002  
Federal I.D. No.: 612713  
E-mail: janderson@albmlaw.com  
**ATTORNEYS FOR DEFENDANT,  
DR. MICHAEL PENDLETON**

**CERTIFICATE OF SERVICE**

I certify that this document was served on all counsel of record by the means  
shown below on January 7, 2011.

**Via CM/RRR**  
Kathryn Snapka  
THE SNAPKA LAW FIRM  
P.O. Drawer 23017  
Corpus Christi, Texas 78403  
*Attorney for Plaintiff*

**Via CM/RRR**  
David Holman  
The Holman Law Firm, P.C.  
24 Greenway Plaza, Suite 2000

Houston, Texas 77046  
*Attorney for Plaintiff*

**Via CM/RRR**

Benny M. Cason  
Charles C. Webb Jr.  
Daniel G. Covich  
Webb, Cason & Covich, P.C.  
710 Mesquite Street  
Corpus Christi, Texas 78401  
*Attorneys for Intervenors*

/s/ Myra K. Morris  
OF ROYSTON, RAYZOR, VICKERY & WILLIAMS, L.L.P.